

are age 55 or over is expressed under the terms of the plan as a life annuity payable at normal retirement age (or current age, if later) as described in paragraph (b)(1)(i)(A) of this section and the plan provides that the accumulated benefit of participants who are younger than age 55 is expressed as the current balance of a hypothetical account as described in paragraph (b)(1)(i)(B) of this section, then the safe harbor described in section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to individuals who are or could be participants who are age 55 or over.

(iv) \* \* \*

*Example 4.* \* \* \*

(iii) \* \* \* If, instead of the facts in paragraph (i) of this *Example 4*, the plan had been amended to provide only participants who have not yet attained age 55 by January 1, 2012, with a benefit that is the greater of the benefit under the average annual compensation formula and a benefit that is based on the balance of a hypothetical account, then the safe harbor would not be satisfied with respect to individuals who have attained age 55 by January 1, 2012.

\* \* \*

(c) \* \* \*

(5) \* \* \*

*Example 2.* \* \* \*

(iv) \* \* \* The plan provides that, as of a participant's annuity starting date, the plan will determine whether the benefit attributable to the opening hypothetical account balance payable in the particular optional form of benefit selected is equal to or greater than the benefit accrued under the plan through the date of conversion and payable in the same generalized optional form of benefit with the same annuity starting date.

*Example 3.* \* \* \* (i) \* \* \* Under the terms of Plan E, the benefit attributable to A's opening hypothetical account balance is increased so that A's straight life annuity commencing on January 1, 2015, is \$1,000 per month.

\* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) *Market rate of return for single rates.* Except as otherwise provided in this paragraph (d)(1), an interest crediting rate is not in excess of a market rate of return only if the plan terms provide that the interest credit for each plan year is determined using one of the following specified interest crediting rates:

\* \* \*

(f) \* \* \*

(2) \* \* \*

(iii) \* \* \* For the periods after the statutory effective date set forth in paragraph (f)(1) of this section and before the regulatory effective date set forth in paragraph (f)(2)(i) of this

section, the safe harbor and other relief of section 411(b)(5) apply and the market rate of return and other requirements of section 411(b)(5) must be satisfied. \* \* \*

**Guy R. Traynor**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

[FR Doc. 2010-32539 Filed 12-27-10; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9508]

**RIN 1545-BJ85**

#### Source of Income From Qualified Fails Charges; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to temporary regulations (TD 9508) that were published in the **Federal Register** on Wednesday, December 8, 2010 (75 FR 76262) providing guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442.

**DATES:** This correction is effective on December 28, 2010, and is applicable beginning December 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sheila Ramaswamy or Anthony J. Marra at (202) 622-3870 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations (TD 9508) that are the subject of this document are under section 863 of the Internal Revenue Code.

##### Need for Correction

As published, the temporary regulations (TD 9508) contain an error that may prove to be misleading and is in need of clarification.

##### List of Subject in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.863-10T is amended by revising the paragraph (f) to read as follows:

**§ 1.863-10T Source of income from a qualified fails charge (temporary).**

\* \* \*

(f) *Expiration date.* This section expires on December 6, 2013.

**Guy R. Traynor,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

[FR Doc. 2010-32536 Filed 12-27-10; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF JUSTICE

[Docket No. USPC-2010-04]

### 28 CFR Part 2

#### Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Final rules.

**SUMMARY:** The U.S. Parole Commission is revising its rule on original jurisdiction cases. The revision adds as a criterion for original jurisdiction designation a case in which the offender caused the death of a law enforcement officer while the officer was performing his duty. In the rule on the quorum of Commissioners needed for agency action, the Commission is adding provisions that describe the consequence of a vote in which the Commission members are equally divided in their decisions.

**DATES:** *Effective date:* January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rockne Chickinell, Office of General Counsel, U. S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** In 1974, the predecessor to the United States Parole Commission, the United States Board of Parole, began using an “original jurisdiction” voting procedure. 28 CFR 2.17 (1974). A regional director—a Parole Board member sitting in one of the five regional offices of the former Board—could designate the case for the “original jurisdiction of the regional directors,” and the decision to grant or deny parole would then be made on the majority vote of the five regional directors at a quarterly meeting of these directors. The criteria for designation were: (1) National security offense; (2) organized crime offender; (3) national or unusual interest in the prisoner; and (4) long-term sentence. The prisoner could appeal a parole denial to the three national Board members in Washington, DC and some appeals were scheduled for resolution by the entire eight-member Board of Parole at a quarterly business meeting. 28 CFR 2.27 (1974).

In explaining a 1975 amendment to § 2.17, the Board of Parole noted that the increased voting requirement in original jurisdiction cases was “designed to protect the public’s confidence in the integrity of Parole Board decisions by providing a broadly based consensus of Board Members in cases where there is more likely to be public interest in the grant or denial of parole.” 40 FR 5357 (Feb. 5, 1975). That same year the Board eliminated the requirement that all five regional directors vote on original jurisdiction cases, and instead provided that the decision could be made on the votes of a regional director and the national directors in Washington, DC. Appeals would be decided at the Board’s quarterly business meetings. In 1976, Congress enacted the Parole Commission Reorganization Act (Pub. L. 94–233) and confirmed many of the changes made by the Board of Parole on the regionalization of parole functions and the use of paroling policy guidelines. In the conference report regarding the legislation, the conferees from the House and Senate stated that the new statute was flexible enough to allow the Parole Commission to continue to reserve special categories of cases for initial consideration by the full Commission, but that they expected that such consideration “should occur only in cases involving special circumstances.” House Conference Report No. 94–838 at 22.

The original jurisdiction regulation has remained essentially the same since 1976. The voting quorum requirement and nature of the second review has changed given the fluctuating membership of the Commission. The initial decision is now made by the

majority vote of those Commissioners holding office, and the second review is no longer denominated an “appeal,” but a reconsideration by the entire membership. The designation of a case for the original jurisdiction of the Commission only affects the number of Commissioners voting on a case disposition and does not change the substantive criteria in making the determination.

In recent years the Commission has conducted parole determination proceedings for some prisoners whose offense behavior caused the death of a law enforcement officer during the officer’s performance of his duties, whether an agent with the Federal Bureau of Investigation, a ranger with the U.S. Park Service, or a local police officer. These proceedings, and the possibility of the prisoner’s discharge from custody on parole, understandably cause heightened interest in the Commission’s decision-making process from the victim’s family, other persons and organizations, and various media representatives. While the Commission’s present criteria for original jurisdiction designations almost always result in the use of the voting procedure for prisoners who have caused the death of law enforcement personnel, the Commission believes that an additional criterion specifying the use of the original jurisdiction procedure for these cases is appropriate. The addition of this criterion expresses the Commission’s resolve that the general public, and those persons charged with enforcing federal, state and local laws, have confidence in parole decisions for offenders whose grievous crimes against law enforcement personnel have caused an unusual interest in the outcome of the parole consideration. In revising § 2.17, the Commission has also edited paragraph (a) to make it more readable.

The Commission is also revising its regulation at 28 CFR 2.63 that describes the quorum requirement of the Commission. The revision specifies the decision that results from an evenly-split vote of the Commission’s members on the disposition of a matter before the entire membership of the Commission. The Commission presently has four voting members holding office so the prospect of such a vote is more likely than when the Commission has an odd number of members. The revised rule implements the common law and parliamentary law principle that a proposed action that is the subject of a tie vote fails of adoption. *E.g.*, 59 AmJur 2d, Parliamentary Law § 17 (2010). The Commission already incorporates this principle in its rule at 28 CFR 2.27(a) on

the disposition of petitions for reconsideration in original jurisdiction cases. When a majority vote of the Commission’s membership cannot be reached in a case disposition, the revised rule states that if the Commission made an earlier decision for the offender, for example “continue to a presumptive parole after service of 240 months,” then the previous decision remains unchanged. If the Commission has not previously made a decision on the case matter under review, then the tie vote results in a return to the offender’s status quo ante, which may be a prisoner’s continuance in custody until the next parole release hearing, or a parolee’s return to parole supervision after release from the custody of a violator warrant. The one significant exception to this general rule occurs in the case of a prisoner under consideration for mandatory parole pursuant to 18 U.S.C. 4206(d). This statute requires the prisoner’s release on parole unless the Commission makes a finding on one of the disqualifying criteria listed in the statute. If, after a hearing in a mandatory parole consideration there is a tie vote by the Commissioners, the result would be a parole release. The amended rule also explicitly authorizes a re-vote by the Commissioners to resolve an impasse.

The Commission is promulgating these rules as final rules without the opportunity for public comment because the rules are procedural rules that do not affect the substantive criteria for making case dispositions.

### Implementation

The regulations set forth below will be made effective on January 31, 2011.

### Executive Order 12866

The U. S. Parole Commission has determined that these final rules do not constitute significant rules within the meaning of Executive Order 12866.

### Executive Order 13132

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

### Regulatory Flexibility Act

The final rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

### Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

### Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

These rules are not “major rules” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act), now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

### The Final Rule

■ Accordingly, the U. S. Parole Commission is adopting the following amendment to 28 CFR part 2.

### PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.17 (b) to read as follows:

#### § 2.17 Original jurisdiction cases.

(a) \* \* \*

(b) A Commissioner may designate a case as an original jurisdiction case if the case involves an offender:

- (1) Who committed a serious crime against the security of the nation;
- (2) Whose offense behavior included an unusual degree of sophistication or planning or was part of a large scale criminal conspiracy or continuing criminal enterprise;
- (3) Who received national or unusual attention because of the nature of the

crime, arrest, trial, or prisoner status, or because of the community status of the offender or a victim of the crime;

(4) Whose offense behavior caused the death of a law enforcement officer while the officer was in the line of duty; or

(5) Who was sentenced to a maximum term of at least 45 years or life imprisonment.

\* \* \* \* \*

■ 3. Revise § 2.63 by designating the existing text as paragraph (a) and adding paragraph (b) as follows:

#### § 2.63 Quorum.

(a) \* \* \*

(b)(1) In the event of a tie vote of the Commission's membership on a matter, the matter that is the subject of the vote is not adopted by the Commission.

(2) If the matter that is the subject of the tie vote is the disposition of an offender's case, then the result of the tie vote is the offender's status quo ante, *i.e.*, no action is taken that is more favorable or more adverse regarding the offender. If in an earlier decision the Commission has given an offender a presumptive release date or a date for a 15-year reconsideration hearing, then the result of the tie vote is no change in the presumptive date or the date of the 15-year reconsideration hearing. If an offender is facing possible parole rescission or revocation, the result of the tie vote is the offender's retention of the parole effective date or the offender's return to supervision. *Exception:* If there is a tie vote in making one of the findings required by § 2.53 in a mandatory parole determination, the result of the tie vote is that the prisoner must be granted mandatory parole.

(3) The Commission may re-vote on a case disposition to resolve a tie vote or other impasse in satisfying a voting requirement of these rules.

Dated: December 21, 2010.

**Isaac Fulwood,**

*Chairman, United States Parole Commission.*

[FR Doc. 2010–32596 Filed 12–27–10; 8:45 am]

**BILLING CODE 4410–31–P**

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

#### 29 CFR Part 2700

#### Simplified Proceedings

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the “Commission”) is an independent adjudicatory agency that provides

hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, or Mine Act. Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is publishing a final rule to simplify the procedures for handling certain civil penalty proceedings.

**DATES:** The final rule takes effect on March 1, 2011. The Commission will accept written and electronic comments received on or before January 12, 2011.

**ADDRESSES:** Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state “Comments on Simplified Proceedings” in the subject line and be sent to [mmccord@fmshr.gov](mailto:mmccord@fmshr.gov).

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 20, 2010, the Commission published in the **Federal Register** a rule proposing Simplified Proceedings in certain civil penalty proceedings. 75 FR 28223. The Commission explained that since 2006, the number of new cases filed with the Commission has dramatically increased, and that in order to deal with that burgeoning caseload, the Commission is considering methods to simplify and streamline its procedures for handling certain civil penalty proceedings.

The Commission invited comments on the proposed rule through June 21, 2010. The Commission received comments from: (1) The Law Offices of Adele L. Abrams; (2) the United Mine Workers of America; (3) the Secretary of Labor through the Office of the Solicitor (“MSHA” or the “Secretary”); (4) Public Citizen; (5) Industrial Minerals Association-North America; (6) Alliance Coal, LLC; (7) Chris Barber; (8) Arch Coal, Inc.; (9) Jackson Kelly PLLC; and (10) Imerys.

The major differences between the simplified procedures set forth in the proposed rule and current conventional